

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p>Complainant,</p> <p>v.</p> <p>LCR TELECOMMUNICATIONS, L.L.C.,</p> <p>Respondent.</p>	<p>DOCKET NO. FCU-02-18 (C-02-285)</p>
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(Issued October 17, 2002)

On August 26, 2002, David J. Halblom, Sr., filed a complaint with the Board alleging his long distance telephone service had been changed from AT&T Communications of the Midwest, Inc., (his preferred carrier) to LCR without his knowledge or permission. Board staff forwarded the complaint to LCR on August 27,

2002, and on September 10, 2002, LCR responded. LCR stated that Mr. Halblom's service was changed as a result of a July 26, 2002, marketing call; that the change was authorized by "John Laktash, Manager," who gave his date of birth as September 5 for proof and verification purposes; and that Mr. Halblom's account was completely canceled out of LCR's system on September 4, 2002, and issued a 100 percent credit in the amount of \$57.05.

Board staff forwarded the response to Mr. Halblom, who responded on September 23, 2002, that his date of birth is November 8 and that the voice on the verification recording is "not my voice, my agent, or anyone else associated with me."

On September 25, 2002, Board staff issued a proposed resolution pursuant to 199 IAC 6.4, finding that the third-party verification offered by LCR is invalid and the switch of Mr. Halblom's service was therefore a slam. Board staff recognized that LCR had fully credited Mr. Halblom's account for the toll calls made using LCR's service; Board staff also directed Qwest Corporation, Mr. Halblom's local exchange service provider, to assess LCR the preferred interexchange carrier change charges associated with changing Mr. Halblom's account to LCR and back to AT&T.

On October 9, 2002, Consumer Advocate filed a request for formal proceeding. Consumer Advocate does not take issue with the proposed resolution. Instead, Consumer Advocate offers only the allegation that there is reasonable ground for formal investigation of the complaint. The only relief requested docketing "for the purpose of investigating the complaint, affording LCR such additional notice

and opportunity for hearing as may be appropriate, and considering the propriety of a civil monetary penalty pursuant to Iowa Code § 476.103(4) (2002)."

The Board will deny the request for formal proceedings. Iowa Code § 476.3 (2002) requires that the Board grant a request to initiate a formal proceeding if there is any reasonable ground for investigating the complaint. Consumer Advocate has not offered any reasonable ground for further investigation of this matter, other than the fact that the proposed resolution of Board staff "does not consider the possible propriety of issuing a civil monetary penalty"

The proposed resolution is not in error for failing to consider issuance of a civil penalty. Board staff does not have the authority to assess civil penalties for slamming complaints. Iowa Code § 476.103(4)"b" provides that a civil penalty may be levied by the Board, after notice and opportunity for hearing. The statute does not authorize the assessment of civil penalties by Board staff after informal complaint proceedings. Thus, the fact that the proposed resolution does not consider issuance of a civil penalty is not an error and cannot be grounds for further investigation of the matter, as the remedy simply is not available as a part of a proposed resolution. If Board staff believes an informal complaint raises issues that justify consideration of civil penalties, staff may ask the Board to initiate formal complaint proceedings to give the company notice and an opportunity for hearing. In doing so, staff would explain why staff was of the opinion that the case in question justifies consideration of civil penalties. The same explanation should be offered by any other party requesting formal complaint proceedings to consider civil penalties, but that explanation is

lacking in this case. Consumer Advocate does not offer any particular, case-specific basis for further investigation of this complaint.

The Board acknowledges that there is always a slight possibility that further investigation of a complaint would result in further action by the Board, but it is at least as likely that further investigation would not result in any change in the proposed resolution. In slamming complaints, in particular, it will almost always be true that a formal investigation might turn up some interesting information, but if the Board were to accept that mere possibility as sufficient to establish reasonable grounds for further investigation, then the requirements of § 476.3 would be rendered meaningless and every proposed resolution that finds a slam would become a formal complaint proceeding. That result should be avoided.

IT IS THEREFORE ORDERED:

The "Request For Formal Proceeding" filed on October 9, 2002, by the Consumer Advocate Division of the Department of Justice is denied, pursuant to Iowa Code §§ 476.3 and 476.104 (2001).

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of October, 2002.